

1 SB361  
2 200106-1  
3 By Senator Waggoner  
4 RFD: Governmental Affairs  
5 First Read: 02-MAY-19

SYNOPSIS: Existing law relating to the adoption of new rules by agencies grants the Joint Committee on Administrative Regulation Review discretionary authority to approve, disapprove, or recommend changes to an agency's proposed rule, or to render no action and approve an agency's proposed rule by implication.

The existing review process for proposed rules also requires that: (1) proposed rules which have an economic impact on businesses must be accompanied by a Business Economic Impact Statement detailing the proposed rule's estimated impact on businesses; and (2) proposed rules which have any economic impact must be accompanied by a fiscal note detailing the rule's impact on the state, its governmental and non-governmental entities, and its residents, generally. The joint committee, upon receipt of these materials, may exercise its discretionary power to require the agency to

1 consider the feasibility of alternatives with less  
2 economic impact.

3 This bill would set a minimum threshold for  
4 a proposed rule's economic impact where, if the  
5 total costs estimated within the fiscal note  
6 detailing the proposed rule's impact exceeds a \$1  
7 million threshold, the rule shall not take effect  
8 absent a joint resolution of approval by the  
9 Legislature, or submission to the joint committee  
10 for approval of a germane modification to the rule  
11 to reduce costs below the threshold. If that  
12 estimate exceeds \$750,000, the Legislative Services  
13 Agency, Fiscal Division, would perform an analysis  
14 of the veracity and accuracy of the fiscal note.

15 This bill would also allow any member of the  
16 Legislature or the joint committee to request that  
17 the joint committee require an agency to prepare  
18 and submit a Business Economic Impact Statement.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT  
23

24 Relating to administrative procedure; to amend  
25 Sections 41-22-5.1, 41-22-5.2, and 41-22-23 of the Code of  
26 Alabama 1975; to set a minimum threshold for a proposed rule's  
27 economic impact; to set measures to reduce the cost of

1 proposed rules below that threshold; to require approval by  
2 the Joint Committee on Administrative Regulation Review for  
3 any rule with costs above that threshold to take effect; and  
4 to allow the joint committee to request a Business Economic  
5 Impact Statement without prompting by a business.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 41-22-5.1, 41-22-5.2, and  
8 41-22-23 of the Code of Alabama 1975, are amended to read as  
9 follows:

10 "§41-22-5.1.

11 "(a) This section and Section 41-22-5.2 shall be  
12 known and may be cited as "The Red Tape Reduction Act."

13 "(b) When an agency files a notice of intent to  
14 adopt, amend, or repeal any rule, the agency shall make its  
15 best efforts to notify the public of the proposed rule. At a  
16 minimum, when the agency files the notice of intent, the  
17 agency shall post the text of the rule the agency proposes to  
18 adopt, amend, or repeal on its website or, if the agency has  
19 no website, on a website operated or maintained by the  
20 executive branch. Additionally, when the agency files a notice  
21 of intent to adopt, amend, or repeal a rule, the agency shall  
22 electronically notify any person who has registered with the  
23 agency his or her desire to receive notification of any  
24 proposal by the agency to adopt, amend, or repeal a rule.

25 "(c) If, prior to the end of the notice period, a  
26 business notifies an agency that it will be negatively  
27 impacted by an action proposed under subsection (b), the

1 agency shall prepare and submit to the committee or its  
2 successor committee, agency, or service the information  
3 provided by the affected business as well as a Business  
4 Economic Impact Statement. The statement shall estimate the  
5 number of businesses subject to the agency's proposal as well  
6 as the projected reporting, recordkeeping, and other  
7 administrative costs required for compliance with the  
8 proposal. An agency shall prepare the business economic impact  
9 statement using information available to the agency in the  
10 normal course of business and utilizing the expertise and  
11 experience of existing agency employees.

12 "(d) If, prior to the end of the notice period, any  
13 member of the Legislature or the joint committee notifies the  
14 committee that he or she wishes the agency to prepare and  
15 submit to the committee or its successor committee, agency, or  
16 service a Business Economic Impact Statement as described in  
17 subsection (c), the committee shall require the agency to  
18 prepare and submit the statement.

19 ~~"(d)~~ (e) After receiving a business economic impact  
20 statement from an agency, the committee or its successor  
21 committee, agency, or service may require the agency to  
22 analyze and report to the committee or its successor  
23 committee, agency, or service the feasibility of some or all  
24 of the following methods of reducing the impact of the rule on  
25 businesses:

26 "(1) The establishment of less stringent compliance  
27 or reporting requirements for businesses.

1           "(2) The establishment of less stringent schedules  
2 or deadlines for compliance or reporting requirements for  
3 businesses.

4           "(3) The consolidation or simplification of  
5 compliance or reporting requirements for businesses.

6           "(4) The establishment of performance standards for  
7 businesses to replace design or operational standards required  
8 in the rule.

9           "~~(e)~~ (f) An agency shall include information on any  
10 business economic impact statement whether the proposed rule  
11 is proposed as a result of a requirement issued by a federal  
12 agency.

13           "~~(f)~~ (g) A business economic impact statement  
14 required to be filed pursuant to this section shall be filed  
15 with the ~~Legislative Reference Service~~ Legislative Services  
16 Agency at the same time as the proposed rule is certified to  
17 the ~~Legislative Reference Service~~ Legislative Services Agency  
18 and shall be available for public inspection.

19           "~~(g)~~ (h) Each agency that files a business economic  
20 impact statement, at the time it is filed, shall place that  
21 statement on its website in a location that is easily  
22 accessible by the general public, or, if the agency does not  
23 have a website, on a website operated or maintained by the  
24 executive branch.

25           "~~(h)~~ (i) If the committee or its successor  
26 committee, agency, or service determines that an agency or a  
27 division of an agency exists primarily to perform

1 certification or licensing-related functions, the agency is  
2 not required to comply with the provisions of this section  
3 unless the committee or its successor committee, agency, or  
4 service determines in writing that an agency's proposal has  
5 such a negative impact on businesses that the filing of a  
6 business economic impact statement is warranted.

7 Notwithstanding the provisions of subsection (c) of Section  
8 41-22-6 providing that a rule is effective 45 days after  
9 filing with ~~Legislative Reference Service~~ the Legislative  
10 Services Agency, in any case in which the committee or its  
11 successor committee, agency, or service determines that the  
12 filing of a business economic impact statement is warranted as  
13 provided herein, the effective date of the rule shall be 45  
14 additional days after the effective date specified in  
15 subsection (c) of Section 41-22-6. In all other respects, the  
16 remainder of this chapter shall continue to apply to the  
17 proposed rule.

18 "~~(i)~~ (j) An agency or department shall fulfill any  
19 request for a license or permit within ~~28~~ 30 calendar days  
20 after receiving the application or notify the applicant of the  
21 reason for failure to issue the license or permit.

22 "~~(j)~~ (k) An agency is not required to comply with  
23 this section if the proposed rule is being adopted in order  
24 for the agency to comply with membership requirements in a  
25 multi-state or national membership organization.

1           "~~(k)~~ (l) This section shall not apply to the  
2 promulgation of an emergency rule adopted pursuant to  
3 subsection (b) of Section 41-22-5.

4           "§41-22-5.2.

5           "(a) Within five years of July 1, 2013 and every  
6 five years thereafter, each agency shall review all agency  
7 rules existing on that date to determine whether the rules  
8 should be continued without change, or should be amended or  
9 rescinded, and shall certify that the agency completed the  
10 review to the Legislative Services Agency, Legal Division. ~~If~~  
11 ~~the head of the agency determines that completion of the~~  
12 ~~review of existing rules is not feasible by the established~~  
13 ~~date, the agency shall publish a statement certifying that~~  
14 ~~determination.~~

15           "~~(b) A rule adopted after July 1, 2013, shall be~~  
16 ~~reviewed every five years in a manner consistent with~~  
17 ~~subsection (a).~~

18           "(b) If an agency does not certify that the agency  
19 has reviewed its rules within each five-year period pursuant  
20 to subsection (a), the agency shall not be permitted to adopt  
21 any new rules within each five-year period pursuant to  
22 subsection (a).

23           "§41-22-23.

24           "(a) The notice required by subdivision (a)(1) of  
25 Section 41-22-5 shall be given, in addition to the persons  
26 therein named, to each member of the committee and such other  
27 persons in the legislative department as the committee



1 requires. The form of the proposed rule presented to the  
2 committee shall be as follows: New language shall be  
3 underlined and language to be deleted shall be typed and lined  
4 through. The notice may be provided in an electronic format.

5 "(b) Within the 45-day period between the time a  
6 rule is certified and the date it becomes effective, and  
7 subject to subsection (h) of Section 41-22-5.1, the committee  
8 shall study all proposed rules and may hold public hearings  
9 thereon. The committee may adopt a policy providing when a  
10 public hearing will be held on a rule meeting specified  
11 criteria. ~~In the event the committee fails to give notice to~~  
12 ~~the agency of either its approval or disapproval of the~~  
13 ~~proposed rule within 45 days after filing of the adopted rule~~  
14 ~~with the Legislative Reference Service pursuant to Section~~  
15 ~~41-22-6, the committee shall be deemed to have approved the~~  
16 ~~proposed rule for the purposes of this section. Except as~~  
17 ~~otherwise provided in subsection (g), the committee shall give~~  
18 ~~notice to the agency of either its approval or disapproval of~~  
19 ~~the certified rule within 45 days after filing of the~~  
20 ~~certified rule with the Legislative Services Agency pursuant~~  
21 ~~to Section 41-22-6. In the event the committee disapproves a~~  
22 ~~proposed rule or any part thereof, it shall give notice of the~~  
23 ~~disapproval to the agency.~~ The disapproval of any rule may be  
24 appealed to the Lieutenant Governor in writing by the agency  
25 that submitted the rule within 15 days of disapproval. The  
26 Office of the Lieutenant Governor shall stamp the written  
27 appeal to denote the date the appeal was received. If the

1 disapproval of a rule is appealed to the Lieutenant Governor,  
2 the Lieutenant Governor, within the 15 days after the notice  
3 of appeal of the disapproval of the rule is filed, may review  
4 the rule and hold public hearings he or she determines  
5 necessary.

6 "(1) If the Lieutenant Governor sustains the  
7 disapproval of the rule, he or she shall notify the committee  
8 and return the rule to the agency and the disapproval shall be  
9 final.

10 "(2) If the Lieutenant Governor approves the rule,  
11 he or she shall notify the chair of the committee. The rule  
12 shall become effective upon adjournment of the next regular  
13 session of the Legislature that commences after the approval  
14 unless, prior to that time, the Legislature adopts a joint  
15 resolution that overrules the approval by the Lieutenant  
16 Governor and sustains the action of the committee.

17 "(3) If the Lieutenant Governor fails to either  
18 approve or disapprove the rule within the 15 days after the  
19 notice of appeal of the disapproval of the committee, the rule  
20 shall be deemed approved and the rule shall become effective  
21 upon adjournment of the next regular session of the  
22 Legislature that commences after the deemed approval unless,  
23 prior to that time, the Legislature adopts a joint resolution  
24 that overrides the deemed approval of the Lieutenant Governor  
25 and sustains the action of the committee. In the event the  
26 Office of the Lieutenant Governor is vacant, a rule  
27 disapproved by the committee shall be suspended until the

1 adjournment of the next regular session of the Legislature  
2 following the disapproval. The rule shall be reinstated on  
3 adjournment of that regular session unless the Legislature, by  
4 joint resolution, sustains the disapproval.

5 "(c) The committee may propose an amendment to any  
6 proposed rule and return it to the agency with the suggested  
7 amendment. In the event the agency accepts the rule as  
8 amended, the agency may resubmit the rule as amended to the  
9 committee and the rule shall become effective on the date  
10 specified in the rule, or on the date the amended rule is  
11 submitted, whichever is later. In the event the agency does  
12 not accept the amendment, the proposed amended rule shall be  
13 deemed disapproved, as provided in subsection (b).

14 "(d) An agency may withdraw a proposed or certified  
15 rule. An agency may resubmit a rule so withdrawn or returned  
16 under this section with minor modification. Such a rule is a  
17 new filing and subject to this section but is not subject to  
18 further notice as provided in subsection (a) of Section  
19 41-22-5.

20 "(e) The committee is authorized to review and  
21 approve or disapprove any rule adopted prior to October 1,  
22 1982.

23 "(f) A rule submitted to the committee which has an  
24 economic impact shall be accompanied by a fiscal note prepared  
25 by the agency and including a specific dollar amount of  
26 anticipated economic impact in accordance with this  
27 subsection. The fiscal note shall be resubmitted with any

1 changes when filing the certified rule. For any fiscal note  
2 anticipating seven hundred fifty thousand dollars (\$750,000)  
3 or more of implementation and compliance costs, the  
4 Legislative Services Agency, Fiscal Division, within 21 days  
5 of certification of the rule, shall provide to the committee a  
6 brief analysis of the accuracy and veracity of the agency's  
7 fiscal note and anticipated economic impact. Upon receiving  
8 the fiscal note, and analysis, if any, the committee may  
9 require additional information from the submitting agency,  
10 other state agencies, or other sources. A state agency shall  
11 cooperate and provide information to the committee. At a  
12 minimum, the fiscal note submitted with a proposed rule shall  
13 include the following:

14           "(1) A determination of the need for the regulation  
15 and the expected benefit of the regulation.

16           "(2) A determination of the costs and benefits  
17 associated with the regulation and an explanation of why the  
18 regulation is considered to be the most cost effective,  
19 efficient, and feasible means for allocating public and  
20 private resources and for achieving the stated purpose.

21           "(3) The effect of the regulation on competition.

22           "(4) The effect of the regulation on the cost of  
23 living and doing business in the geographical area in which  
24 the regulation would be implemented.

25           "(5) The effect of the regulation on employment in  
26 the geographical area in which the regulation would be  
27 implemented.

1           "(6) The source of revenue to be used for  
2 implementing and enforcing the regulation.

3           "(7) A conclusion on the short-term and long-term  
4 economic impact upon all persons substantially affected by the  
5 regulation, including an analysis containing a description of  
6 which persons will bear the costs of the regulation and which  
7 persons will benefit directly and indirectly from the  
8 regulation.

9           "(8) The uncertainties associated with the  
10 estimation of particular benefits and burdens and the  
11 difficulties involved in the comparison of qualitatively and  
12 quantitatively dissimilar benefits and burdens. A  
13 determination of the need for the regulation shall consider  
14 qualitative and quantitative benefits and burdens.

15           "(9) The effect of the regulation on the environment  
16 and public health.

17           "(10) The detrimental effect on the environment and  
18 public health if the regulation is not implemented.

19           "(11) Whether the proposed rule is proposed as a  
20 result of a requirement issued by a federal agency or required  
21 to be adopted by an act of the Legislature to administer a  
22 non-discretionary tax, license, fee, or penalty.

23           "(g) (1) If the total economic impact estimated  
24 within the fiscal note submitted with a certified rule exceeds  
25 one million dollars (\$1,000,000) in implementation and  
26 compliance costs, or if the Legislative Services Agency,  
27 Fiscal Division determines that the estimated economic impact

1 exceeds one million dollars (\$1,000,000) in implementation and  
2 compliance costs, the rule shall not take effect unless a  
3 joint resolution of approval is passed by the Legislature, or  
4 a modification is approved by the joint committee pursuant  
5 subdivision (g) (2). This subdivision shall not apply to rules  
6 required to be adopted by an act of the Legislature to  
7 administer a non-discretionary tax, license, fee, or penalty.

8 "(2) The agency may submit to the committee for  
9 approval a germane modification to the rule to reduce the  
10 economic impact below one million dollars (\$1,000,000); if the  
11 committee approves the proposed amendment, the rule shall take  
12 effect as amended. The agency, in modifying the certified  
13 rule, shall consider the following criteria:

14 "a. The establishment of less stringent compliance  
15 or reporting requirements for businesses, governmental  
16 entities, and individuals.

17 "b. The establishment of less stringent schedules or  
18 deadlines for compliance or reporting requirements for  
19 businesses, governmental entities, and individuals.

20 "c. The consolidation or simplification of  
21 compliance or reporting requirements for businesses,  
22 governmental entities, and individuals.

23 "d. The establishment of performance standards for  
24 businesses or governmental entities to replace design or  
25 operational standards required in the bill.

1           "~~(g)~~ (h) In determining whether to approve or  
2 disapprove proposed rules, the committee shall consider the  
3 following criteria:

4           "(1) Is there a statutory authority for the proposed  
5 rule?

6           "(2) Would the absence of the rule or rules  
7 significantly harm or endanger the public health, safety, or  
8 welfare?

9           "(3) Is there a reasonable relationship between the  
10 state's police power and the protection of the public health,  
11 safety, or welfare?

12           "(4) Is there another, less restrictive method of  
13 regulation available that could adequately protect the public?

14           "(5) Does the rule or do the rules have the effect  
15 of directly or indirectly increasing the costs of any goods or  
16 services involved and, if so, to what degree?

17           "(6) Is the increase in cost, if any, more harmful  
18 to the public than the harm that might result from the absence  
19 of the rule or rules?

20           "(7) Are the qualitative and quantitative benefits  
21 to businesses, governmental entities, and individuals  
22 outweighed by the estimated burdens?

23           "~~(7)~~ (8) Are all facets of the rulemaking process  
24 designed solely for the purpose of, and so they have, as their  
25 primary effect, the protection of the public?

26           "~~(8)~~ (9) Any other criteria the committee may deem  
27 appropriate."

1                   Section 2. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.